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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re:

Powin, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-16137 (MBK)

(Jointly Administered)

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF
HITACHI ENERGY LTD TO (I) ASSUMPTION AND ASSIGNMENT OF THE MSA
AND (II) THE SALE TRANSACTION**

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Powin Project LLC [1583]; (ii) Powin, LLC [0504]; (iii) PEOS Holdings, LLC [5476]; (iv) Powin China Holdings 1, LLC [1422]; (v) Powin China Holdings 2, LLC [9713]; (vi) Charger Holdings, LLC [5241]; (vii) Powin Energy Ontario Storage, LLC [8348]; (viii) Powin Energy Operating Holdings, LLC [22495]; and (ix) Powin Energy Operating, LLC [6487]. The Debtors' mailing address is 20550 SW 115th Avenue Tualatin, OR 97062.

Hitachi Energy Ltd (“Hitachi Energy”) and Hitachi Energy Power Conversion Solutions Spain, S.L., f/k/a Experience Knowledge Strategy, S.L. (“EKS” and collectively with Hitachi Energy, “Hitachi”), submit this limited objection and reservation of rights (the “Objection”) in respect of (i) the *Notice of Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 446] (the “Assumption Notice”) and (ii) the *Motion of the Debtors for Entry of an Order (I) Designating a Stalking Horse Bidder and Approving Stalking Horse Bidder Protections (II) Approving Bidding Procedures by Which Interested Parties May Bid and an Auction Sale Format in Connection with the Sale of Substantially All of the Debtors’ Assets, (III) Approving Form of Asset Purchase Agreement, (IV) Approving Form of Notice to be Provided to Interested Parties, (V) Authorizing the Assumption and Assignment of Assumed Contracts and Notice Procedures Thereto, (VI) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder, and (VII) Authorizing the Sale of Debtors’ Property Free and Clear of All Causes of Action and Claims* [Docket No. 228] (the “Sale Motion”).

1. Hitachi submits this limited objection to the assumption and assignment of its primary agreement with the Debtors—the Global Master Product Supply Agreement dated as of October 23, 2023, between Powin LLC and EKS (as amended, the “MSA”)—to the successful bidder in the Debtors’ ongoing sale process, to obtain clarity on three limited issues.

2. **First**, the Assumption Notice confusingly references two Global Master Supply Agreements with EKS, but only one exists. More specifically, the Assumption Notice references a “Global Master Supply Agreement” with a proposed cure payment amount of \$6,458,728.69 and a term remaining through March 31, 2027, but then also lists a “Global Master Product Supply Agreement” with an “unknown” cure payment amount and no other date or description. There is only one MSA and its initial term does in fact run through March 31, 2027, so presumably the reference in the Assumption Notice to another global supply agreement with no specified cure amount is an error. The Debtors should confirm their intent and correct this mistake.

3. **Second**, Powin has materially failed to satisfy its obligations to purchase a minimum volume of energy storage products and related services as required by section 2.1 of the MSA (the “MVCs”). The MVC obligations are specified in amounts for each of calendar years 2024, 2025 and 2026, and in effect carry over to the subsequent year through the initial term of the agreement. Powin is far behind on its minimum volume commitments, but it will not be in default under the terms of the MSA until March 31, 2027. In light of the preceding, Hitachi notes that these shortfalls are not included in the Debtor’ proposed cure amount, but that they will still be due and owing post-assumption and assignment, including for Powin’s failures to satisfy the MVCs prior to assumption and assignment. Absent a substantial increase in purchases, Hitachi estimates that the MVC shortfalls and associated payment obligations of the counterparty to the MSA may exceed \$50 million.

4. Hitachi seeks to avoid any subsequent dispute regarding the amount of MVC shortfall payments that may come due following the assumption and assignment of the MSA. As the successful bidder and its form of proposed sale order have not yet been determined, Hitachi proposes the following language for the sale order to address its concerns concerning the MVCs and any unknown indemnification claims:

Notwithstanding anything to the contrary in the Sale Order or Bidding Procedures Order, and notwithstanding the commencement of the Chapter 11 Cases, any assumption and assignment of the Global Master Product Supply Agreement dated as of October 23, 2023, (as amended, the “MSA”) between Powin LLC and Hitachi Energy Power Conversion Solutions Spain, S.L., f/k/a Experience Knowledge Strategy, S.L. (“EKS”), shall require payment to EKS of liquidated cure costs in the amount of \$6,458,728.69 on or promptly after the closing of the Sale, but shall not otherwise alter, impair, modify or limit the rights and obligations of the parties to the MSA, including in respect of any contingent, unliquidated or unmatured claims arising at any time under MSA, whether such claims are now existing or

hereinafter arising, including without limitation in respect of (a) the total minimum volume commitments provided for in section 2.1 and Exhibit 1 of the MSA and (b) rights and claims for indemnification under section 11.1 of the MSA.

5. ***Finally***, Hitachi hereby reserves its rights for further notice and the opportunity to object should the scope of assets the Debtors seek to sell to the successful bidder (or bidders) expand to include the Debtors' indirect interest in EKS HoldCo, LLC ("EKS HoldCo"). Hitachi Energy owns 80% of the membership interest in EKS HoldCo. Powin EKS SellCo LLC, a non-Debtor subsidiary of the Debtors, owns the remaining 20% membership interest in EKS HoldCo (the "Remaining Interest").

6. On July 14, 2025, the Debtors filed the *Notice of Filing Amended Stalking Horse APA, Order Approving Bidding Procedures, and Bidding Procedures* [Docket. No. 384], which included the asset purchase agreement between Powin and FlexGen Power Systems, LLC (the "Stalking Horse APA"). Section 2.2(k) of the Stalking Horse APA expressly excludes from the Sale the "assets of Powin EKS SellCo, LLC set forth on Schedule 2.2(j)." On information and belief, Schedule 2.2(j) currently excludes the Remaining Interest.

7. Consistent with the Stalking Horse APA, Debtors' counsel has represented that the Remaining Interest was to be excluded and not part of the proposed Sale. Hitachi relied on that representation in determining whether to submit a qualified bid in advance of the auction. Should anything change with respect to a proposed disposition of the Remaining Interest or the rights of non-Debtor Powin EKS SellCo LLC under the limited liability agreement of EKS HoldCo, as it relates to the auction process and Sale Motion, Hitachi hereby objects, requests prompt notice of the same, and reserves the right to be heard further on such matters.

Reservation of Rights

8. Hitachi Energy and EKS reserves all rights, claims and defenses concerning the matters described in this Objection and its agreements with the Debtors and their non-Debtor affiliates, including without limitation claims on account of purchase orders that do not arise under

the MSA, claims relating to the Waratah, Ulinda, Pulse projects and against the owners thereof, rights and defenses under the limited liability agreement of EKS HoldCo, and claims and defenses regarding the put and call options in respect of the Remaining Interest.

Dated: July 28, 2025

Respectfully submitted,

/s/ Boaz I. Cohen

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CERTIFICATE OF SERVICE

I, Boaz I. Cohen, hereby certify that the *Limited Objection and Reservation of Rights of Hitachi Energy Ltd To (I) Assumption and Assignment of the MSA and (II) the Sale Transaction* was filed and served on July 28, 2025, via CM/ECF on all parties registered to receive notice in this case.

/s/ Boaz I. Cohen
Boaz I. Cohen